

1986

State of Utah, by and through Department of Social Services v. Mark Ronald Canham : Brief of Appellant

Utah Court of Appeals

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Mark Ronald Canham; pro se; Attorneys for Defendant/Respondent.

David L. Wilkinson; Attorney General; Sandy Mooy; Assistant Attorney General; Attorneys for Plaintiff/Appellant.

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UTAH COURT
BRIEF

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DOCKET NO. 860158

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, by and through
Department of Social Services

Plaintiff/Appellant

vs

MARK RONALD CANHAM

Defendant/Respondant.

860292?

860158-CA
Civil No. 20992

Category No. 7

BRIEF OF PLAINTIFF/APPELLANT

STATE OF UTAH

Appeal from the Third Judicial District Court of
Salt Lake County
Honorable Leonard Russon, District Court Judge

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Defendant/Respondant

STATE OF UTAH, by and through
Department of Social Services

VS

Defendant/Respondant.

Category No. 7

Defendant/Respondant

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STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the non-joinder of the ex-husband of the mother of the child in a paternity action constitutes grounds for dismissal of the paternity action when evidence is received by the trial court which established beyond a reasonable doubt that the ex-husband of the mother of the child cannot be the biological father of the child at issue.

2. Whether the Divorce Decree between the mother and her ex-husband (under the circumstances) establishes, under the doctrine of res judicata, the paternity of the minor child such that a paternity action may not be brought to identify the true biological father of the minor child at issue.

STATEMENT OF FACTS

This is a paternity action pursuant to the provisions of the Uniform Act on Paternity as enacted in the Utah Code Annotated Sections 78-45a-1 et seq, against the alleged biological father of the minor child at issue. The minor child at issue, Keith Douglas Sandoval, was born to Barbara Sandoval the 16th day of July, 1978.(Tr. 67). At the time of the birth, Ms. Sandoval was married to Kenneth Joseph Sandoval. Kenneth and Barbara Sandoval were divorced by a Decree of Divorce entered by the Third District Court, State of Utah the 23rd day of September, 1981. (Exhibit "A") Although the child was born during the marriage of the parties, the child was conceived prior to the marriage of the parties and was conceived

prior to the time that Barbara Sandoval had met Kenneth Sandoval. (TR 72, 75, 76) Barbara Sandoval and Kenneth Joseph Sandoval deemed Keith Sandoval as a stepchild of Kenneth Joseph Sandoval. (TR. 77) The Decree of Divorce and the Findings of Fact underlying the Decree of Divorce of the Sandovals does note that the child was born during their marriage and that Kenneth Sandoval has a support obligation for the minor child which accrued during the time that the Sandovals were married. (Exhibit "A") The support obligation was imposed upon Mr. Sandoval pursuant to the provisions of Utah Code Annotated, Section 78-45-4.1, which imposes a support obligation upon a step parent during the course of that step parent's marriage to the natural parent of the child. Prior to the trial of the paternity action, one of Mark Canham's attorneys (Mr. Canham during the course of the litigation had the services of three separate attorneys) filed a motion to join as indispensable parties the mother, Barbara Sandoval, and the minor child, Keith Sandoval but not Kenneth Joseph Sandoval. (R.) This motion was never noticed up before the trial court nor was any dispositive order entered by the court relative to this motion. In the opening minutes of the trial, counsel for Canham delivered to the court and to counsel for the State of Utah a motion entitled "Motion in Limine for Dismissal". (Tr. 1) In the discussion on this motion, the Court determined that the motion was, in actuality, a motion to dismiss based upon an alleged failure to join an indispensable party and a motion to dismiss based upon the alleged determination resolving the issue of paternity in the

Sandoval Divorce Decree and its application, by res judicata, to the paternity proceeding. (Tr. 7) The Court reserved ruling upon the motion, indicating that the matter would be taken under advisement. (Tr. 20) The trial court then proceeded with the trial upon the merits relative to the issue of paternity. The trial court received testimony from Dr. Charles DeWitt, pathologist from the University of Utah Medical Center, which established as a biological impossibility that Kenneth Sandoval could be the natural father of the minor child. (Tr. 45) Dr. DeWitt's testimony did establish that there was a high probability of Mark Ronald Canham being the natural father of the minor child. (Tr 46-49) Barbara Sandoval gave testimony that she met Mark Ronald Canham in 1977 and thereafter began having sexual intercourse with Mark Canham. (Tr 65-67, 70-72) Barbara Sandoval's testimony was that prior to having intercourse with Mark Canham, she had intercourse with no other individual (Tr. 70), and that during the time period of September 1977 through and including November 1977, she had intercourse with Mark Canham. Ms. Sandoval further testified that she did not meet Kenneth Joseph Sandoval until December, 1977, at which time she suspected that she was already pregnant. (Tr 72, 75, 76) At no time did either Barbara Sandoval or Kenneth Joseph Sandoval believe that Kenneth Joseph Sandoval was the natural father of the child. (Tr 77) Mark Ronald Canham was called as a witness on behalf of the State of Utah and his testimony did acknowledge that during October, November and December, 1977, he did have sexual intercourse with Barbara

Sandoval. (Tr 82, 88) The defense presented no evidence whatsoever and no rebuttal evidence to that presented by Plaintiff. (Tr 92) The trial court rendered its decision through a Memorandum Decision dated the 2nd day of October, 1985 with the order dismissing the matter being entered by the Court on the 9th day of October, 1985. (R) The trial court's order dismissed the paternity action against Mark Ronald Canham on two bases: (1) the failure to join an indispensable party and (2) that the Divorce Decree between Barbara Sandoval and Kenneth Joseph Sandoval determined the issue of paternity of the minor child and through the application of res judicata required dismissal of the paternity action against Ronald Canham.

SUMMARY OF ARGUMENT

I. Kenneth Joseph Sandoval, the child's past stepfather, was not an indispensable party, under the guidelines of Provident Tradesman Bank & Trust, and the trial court erred in dismissing the paternity action, due to his non-joinder. Even if Kenneth Joseph Sandoval is a necessary party, the trial court erred in dismissing the action rather than ordering Sandoval joined as provided by Rule 21, Utah Rules of Civil Procedure.

II. Res judicata (or collateral estoppel), based upon the Sandoval's Divorce Decree, does not apply to the paternity action against Canham, as all four requisite criteria, under Searle Brothers are not met. The trial court received evidence which clearly rebutted any Holder presumption and it was established that

Kenneth Joseph Sandoval was not the natural father of the child born during the Sandoval marriage.

ARGUMENT I

THE NON-JOINDER OF KENNETH JOSEPH SANDOVAL AS A PARTY TO THE PATERNITY ACTION DID NOT CONSTITUTE GROUNDS UPON WHICH THE PATERNITY ACTION COULD BE DISMISSED.

Rules 19 and 21, Utah Rules of Civil Procedure, deal with the joinder of parties to an action. The provisions of Rule 19(a) provide that persons having a joint interest are to be joined in an action and they may be joined involuntarily should they refuse to be joined. Rule 19(b) of the Utah Rules of Civil Procedure provides however, that if necessary to accord complete relief to those individuals who are already parties, the Court shall order non-joined individuals to appear in the action. The same section provides that the Court, in its discretion, may proceed with the action without making such persons parties. Rule 21 of the Utah Rules of Civil Procedure provides that the misjoinder or non-joinder of parties is not a ground for dismissal of an action. This rule provides that parties may be dropped or added by order of the court on motion of any party or on the court's own initiative at any stage of the action and upon such terms as are just. Review of the record will show that at no time was any motion ever made by Mark Canham to join Kenneth Joseph Sandoval as an indispensable party to the action. The issue was raised only in the opening minutes of trial in Canham's "Motion in Limine for Dismissal", untimely under Rule 6(d),

Utah Rules of Civil Procedure. See, Provident Tradesman Bank & Trust Co. vs. Patterson, 390 US 102, 19 L. Ed., 936, 88 Supreme Court 733 (1962) fn 4. As provided by Rule 19, of Utah Rules of Civil Procedure, the Court was required to make a determination as to whether Kenneth Joseph Sandoval was indeed an indispensable party. If the Court found that Mr. Sandoval was an indispensable party, Rule 21, Utah Rules of Civil Procedure, indicates that the proper disposition would have been for the Court to order the joinder of Kenneth Joseph Sandoval and not a dismissal of the action. The trial court made no specific determination that Kenneth Joseph Sandoval was an indispensable party and its dismissal of the paternity action was clearly contrary to the provisions of Rule 21, Utah Rules of Civil Procedure. It is the State's contention that if Kenneth Joseph Sandoval is an indispensable party, the trial court erred in dismissing the action and should have proceeded pursuant to Rule 21, Utah Rules of Civil Procedure.

The State of Utah contends that under the facts and circumstances of this case, Kenneth Joseph Sandoval is not an indispensable party to the paternity action. The touchstone case relative to the determination of a persons's indispensibility to an action is Provident Tradesman's Bank and Trust Company vs Patterson, 390 U.S. 102, 19 L. Ed. 2nd 936, 88 Supreme Court 733, (1968). In that opinion, the U.S. Supreme Court states:

"Whether a person is 'indispensable', that is, whether a particular law suit must be dismissed in the absence of that person, can only be determined in the context of particular

litigation....To say that a court 'must' dismiss in the absence of an indispensable party and that it 'cannot proceed' without him puts the matter in the wrong way around: a court does not know whether a particular person is 'indispensable' until it has examined the situation to determine whether it can proceed without him". U.S. at 118, 119 L. Ed. at 950.

The opinion notes that the trial court is to make a pragmatic consideration of the effects of the alternatives of (1) proceeding with the action and shaping relief to accommodate the four interests identified in the opinion relative to the determination of indispensability or (2) dismissing the action. Using Provident as a guideline, analysis shows that Kenneth Joseph Sandoval is not an indispensable party, as the trial court could properly proceed without his participation in the lawsuit and/or could have shaped its relief to accommodate those parties before the court without any adverse affect upon Kenneth Joseph Sandoval.

The State must first contend with the erroneous assumption that the Divorce Decree and Findings of Fact and Conclusions of Law entered by the District Court in the divorce matter between Barbara Sandoval and Kenneth Joseph Sandoval established Kenneth Joseph Sandoval as the father of the child. A review of those court documents shows that the divorce court simply found that a child had been born to Barbara Sandoval on the 16th day of July 1978. No specific Finding of Fact, Conclusion of Law or provision of Divorce Decree provides that the child was issue of the marriage or was fathered by Kenneth Joseph Sandoval. It is evident that care was taken in drafting the Findings of Fact, Conclusions of Law and

Decree of Divorce to avoid a conclusion that the divorce court had made a determination that the child born during the marriage was issue of the marriage and fathered by Kenneth Joseph Sandoval. The support obligations as provided in Paragraph 3 of the Divorce Decree, are carefully worded to comport with the support obligation defined by Utah Code Annotated Section 78-45-4.1, which indicates that a stepparent shall support a stepchild to the same extent that a natural or adoptive parent is required to support a child. The support obligation of the stepparent terminates, however, upon the termination of the marriage relationship between the stepparent and the child's natural parent. The support obligations identified in Paragraph 3 of the Divorce Decree are all worded in the past tense, indicative of Kenneth Joseph Sandoval's obligation as a stepparent only in the past during the time that his marriage to Barbara Sandoval was in effect. There was no provision for any future support, because pursuant to the provisions of Utah Code Annotated Section 78-45-4.1, the support obligation ended upon the Divorce Decree of Kenneth Joseph Sandoval and Barbara Sandoval. Thus, Kenneth Joseph Sandoval had no further interest nor support obligation relative to the minor child upon entry of the Divorce Decree. It is to be recalled that the evidence presented and received by the trial court in this matter established the biological impossibility of Kenneth Joseph Sandoval being the natural father of this child. With such evidence, Kenneth Joseph Sandoval was not an indispensable party or necessary party to the

action. Torres vs Gonzales, 450 P2d 921 (New Mexico 1969). (Evidence was sufficient to rebut presumption that husband was father of the child such that husband was not a necessary party and indispensable party to the action). The trial court erred in dismissing the action as it failed to comply with the guidelines elucidated in Provident Tradesman's Bank and Trust Company vs Patterson, supra, and, in light of the evidence received by the trial court rebutting the presumption the child born during the marriage of the Sandoval's was fathered by Kenneth Joseph Sandoval, Kenneth Joseph Sandoval was not a necessary party.

ARGUMENT II

THE DIVORCE DECREE BETWEEN BARBARA SANDOVAL AND KENNETH JOSEPH SANDOVAL WAS AN INSUFFICIENT BASIS FOR THE TRIAL COURT'S RULING THAT THE PATERNITY OF THE CHILD HAD BEEN ESTABLISHED UNDER THE DOCTRINE OF RES JUDICATA (OR COLLATERAL ESTOPPEL).

Although the trial court's Memorandum Decision and the Order entered by the trial court dismissing this action bases its dismissal upon the doctrine of res judicata, res judicata may not be used in this matter due to the lack of identity of parties in the Sandoval divorce and the paternity action herein. Although the trial court erroneously used the term, res judicata, the correct term should be collateral estoppel. See, Searle Brothers vs Searle, 588 P2d 689 (Utah 1978). In that opinion, this Court adopted four criteria to establish whether a party is collaterally estopped from litigating an issue:

"1. Was the issue decided in the prior adjudication identical with the one presented in the action in question? 2. Was there a final judgment on the merits? 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? 4. Was the issue in the first case completely, fully and fairly litigated?". Supra, at 691.

The Sandoval divorce proceeding fails to meet the requirements of this test. The issue of paternity of Keith Sandoval was not an issue raised in the divorce proceedings between Barbara Sandoval and Kenneth Joseph Sandoval. The Findings of Fact, Conclusions of Law and Divorce Decree in the Sandoval divorce matter deal with Kenneth Joseph Sandoval's support obligation to his stepchild as defined by Utah Code Annotated Section 78-45-4.1, as discussed previously. All parties in the divorce action were aware that Kenneth Joseph Sandoval was not the natural father of the child Keith Sandoval. All parties were aware that Keith Sandoval fell under the definition of a child born out of wedlock as provided by Utah Code Annotated Section 78-45a-1, which provides in part: "A child born out of wedlock includes a child born to a married woman by a man other than her husband." The paternity of the minor child never having been raised as an issue or litigated in any previous court proceeding, it was appropriate for the Department of Social Services to proceed with the paternity action against the alleged natural father of the child pursuant to the provisions of the Uniform Act on Paternity.

The trial court received sufficient, and uncontroverted, evidence to rebut the presumption that the subject child was

fathered by Kenneth Joseph Sandoval, which presumption results from this Court's opinion in Holder vs Holder, 340 P2d 761 (1959). The Holder opinion, however, indicates that this is a rebuttable presumption which exists until, "sense and reason are outraged by holding that it abides." Supra, at 763. The trial court received testimony from Barbara Sandoval that at the time of conception of the minor child at issue herein, she had sexual intercourse only with Mark Ronald Canham, the alleged natural father of this child. She further testified that at the time she met Kenneth Joseph Sandoval, she suspected she was and in fact was pregnant with the child. She had no sexual contact with Kenneth Joseph Sandoval until after she had already conceived the minor child at issue herein. That testimony was received by the trial court without any objection made by Canham nor any motion to strike that testimony. Canham failed to object to such testimony or move to strike such testimony under the provisions of Lopes vs Lopes, 30 U2d 393, 518 P2d 687 (1974) (wherein this Court adopted the Lord Mansfield Rule). Such objection or motion would have been unfounded. Rule 101, Utah Rules of Evidence, provides: "These rules govern proceedings in the courts of this state, to the extent and with the exceptions stated in Rule 1101." The committee notes to Rule 101 state that Rule 101 adopts the general policy making the Rules of Evidence applicable to all instances in Courts of Utah and rejects Lopes vs Lopes to the extent that Lopes permits development and use of special rules of court inconsistent with the Rules of Evidence. Rule 601, Utah Rules of

Evidence, provides at Paragraph (a): "Every person is competent to be a witness except as otherwise provided in these rules." See, also Utah Code Annotated, Section 78-45-11. There is no provision found in Utah Rules of Evidence which could preclude Barbara Sandoval from testifying relative to the time that she conceived the minor child and to the time that she met Kenneth Joseph Sandoval. The Utah Rules of Evidence explicitly supersede this Court's ruling in Lopes vs Lopes, supra, hence, the testimony of Barbara Sandoval was properly received by the trial court. The trial court also received testimony of Dr. Charles DeWitt who testified that Kenneth Joseph Sandoval is biologically incapable of being the father of the minor child. This testimony of Dr. Charles DeWitt was received by the trial court, again, without any objections or motion to strike being made by Canham. The testimony of Dr. Charles DeWitt would not have been under the purview of Lopes vs Lopes, supra, and was competently received by the court. Hales vs Hales '656 P2d 423 (Utah 1982). With such evidence being received by the court, the trial court erred in its ruling because the presumption that Kenneth Joseph Sandoval was the father of Keith Sandoval, (pursuant to the presumption required in Holder vs Holder, supra,) was sufficiently rebutted such that "common sense and reason are outraged by holding that it abides". Holder vs Holder, supra, at 763. The trial court erred in raising, sua sponte, the Lord Mansfield Rule to disregard the evidence received by it. "For the law to exclude the very evidence which may go to the heart of the issue in controversy on the basis of a public

policy which has ceased to exist, is to blind ourselves to the realities of today...(t)hat was a rule for an era in which - child once considered illegitimate had no capacity to become legitimized..." Coffman vs Coffman, 591 P2d 1110 (Arizona 1979) (In Coffman the Arizona Court overruled the application of the Lord Mansfield Rule in the case, and established that a child born during a marriage was not fathered by the husband.) This error of the trial court is particularly blatant in light of the provisions of the Utah Rules of Evidence and the Committee Notes to the rules, discussed above. The trial court erred in its ruling that the divorce action between the Sandovals, wherein it is clear that the divorce court determined the support obligation of Kenneth Joseph Sandoval as a stepfather to Keith Sandoval, established Kenneth Joseph Sandoval as Keith Sandoval's natural father and applied the Divorce Decree of the Sandovals under the doctrine of res judicata to the paternity action against Mark Ronald Canham. The trial court's ruling frustrates the public policies and underlying legislative intent in codifying the obligations of a father in Utah Code Annotated Sections 78-45-3, 78-45a-1 and, 78-45b-4.1. Children are to be maintained from the resources of responsible parents and; it is the natural or adoptive parents of the child to whom the duty of support attaches. "In our view, the husband of the natural mother of an illegitimate child of which he is not the natural father, is not the 'parent' of the child merely because married to the mother." Torres vs Gonzales, supra, at 922. Although Kenneth Joseph Sandoval may

have been married to Barbara Sandoval at the time of birth of Keith Sandoval, he is not the father or the responsible parent of the child. It was error to dismiss the paternity action when the trial court had received adequate testimony and evidence to show that the presumption of legitimacy had been controverted and rebutted beyond a reasonable doubt. (Furthermore, the matter of Kenneth Joseph Sandoval being the natural father of Keith Sandoval was not even a proper issue of consideration.) The trial court's ruling frustrates the applicable public policies and ignores considerations the trial court must apply to require the responsible, natural-father parent to provide support to his child to relieve the burden placed upon the citizenry of the State of Utah through the provision of public assistance and welfare for his child.

CONCLUSION

Appellant respectfully moves this Court to remand the matter for new trial or to remand the case with instructions to enter judgment in favor of Plaintiff, in light of the evidence received by the trial court.

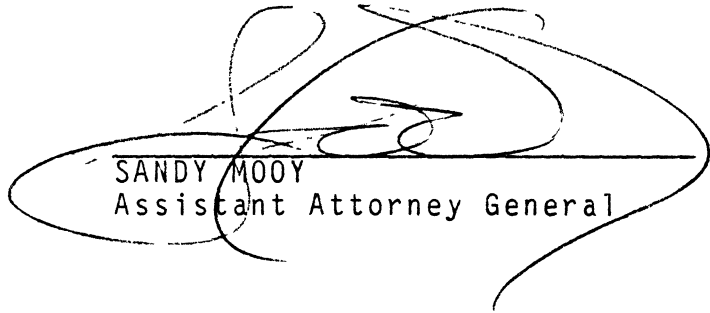
DATED this 24th day of March, 1986.



SANDY MOOY
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that four copies of the foregoing were mailed to the Defendant/Respondent, Mark Ronald Canham at 5685 South 4540 West, West Valley City, Utah 84120 on this 24th day of March, 1986.



SANDY MOOY
Assistant Attorney General

FILED
CLERK
DISTRICT COURT
SALT LAKE COUNTY
UTAH

Attorney for Plaintiff
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

BARBARA SANDOVAL AND THE
STATE OF UTAH, BY AND THROUGH
UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff,

vs.

KENNETH JOE SANDOVAL,

Defendant.

:
:
: LA 166 NO. 2157
: 9-25-81 - 9:24 A.M.
:
:
: DECREE OF DIVORCE
:
:
:
: Civil No. D81-832
:
:
:

Pursuant to the Findings of Fact and Conclusions of
Law made and entered in this action, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is awarded a Decree of Divorce from
Defendant, the same to become final ^{UPON} ~~three months after~~ entry.

2. Plaintiff is awarded the care, custody and
control of the minor child born during the parties' marriage,
subject to Defendant's reasonable and generous rights of visi-
tion.

3. Pursuant to §78-45-9 and §78-45b-3, Utah Code
Annotated, 1953, as amended, the State of Utah is entitled to
collect from Defendant child support accrued during the time
Plaintiff received public assistance for or on account of the
minor child born to Plaintiff during the parties' marriage.

4. The parties have separated and divided their per-
sonal property, and each party is awarded, free of any
claim of the other, all items of personal property which are
in his or her possession, custody or control, and each party
shall be free to dispose of all such items as well as other
items of personal property which may hereafter be acquired b

their respective sole obligations.

7. Each party shall pay his or her own attorney's fees and costs incurred in this action.

DATED this 23rd day of September, 1981.

BY THE COURT:

W. Sterling Evans
DISTRICT JUDGE ATTEST
W. STERLING EVANS
CLERK
CERTIFICATE OF MAILING BY Deborah Anne
Deputy Clerk

I hereby certify that I mailed, U. S. mail, postage prepaid, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to Defendant KENNETH JOE SANDOVAL, at U. S. Army, HHC-82nd Enc. Bn. -APD, New York, New York 0913. and to Jeffrey H. Thorpe, Deputy County Attorney, at 2250 South Redwood Road, Salt Lake City, Utah 84119, this 24 day of SEPTEMBER, 1981.

Mark R. Emmett
MARK R. EMMETT

MARK R. EMMETT
Attorney for Plaintiff
Clark Leaming Office Center
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175 South West Temple #500
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Telephone: (801) 355-6424

By John H. Hinkle
DEPUTY CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

BARBARA SANDOVAL AND THE	:	
STATE OF UTAH, BY AND THROUGH	:	
UTAH STATE DEPARTMENT OF	:	
SOCIAL SERVICES,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
vs.	:	
	:	
KENNETH JOE SANDOVAL,	:	Civil No. D81-832
	:	
Defendant.	:	
	:	

The above-entitled matter came on for hearing on the 8th day of September, 1981, Plaintiff appearing in person and her attorney, Mark R. Emmett, and Defendant not appearing in person or by counsel, and it appearing that Defendant has signed Acceptance of Service, Entry of Appearance and Notice of Waiver which has been filed herein, wherein Defendant entered his appearance, acknowledged receipt of a copy of the Summons and Complaint in this action, accepted service of the same and consented that his default could be entered and Plaintiff take judgment according to the prayer of her Complaint, and the default of Defendant having been entered and Plaintiff having testified to matters set forth in her Complaint, and the Court being fully advised in the premises, hereby makes the following

FINDINGS OF FACT

1. Plaintiff is a resident of Salt Lake County, State of Utah, was such on the date the Complaint herein was filed, had been for more than three months immediately prior to the commencement of this action.
2. Plaintiff and Defendant are wife and husband, having married on March 3, 1978, at Kearns, Salt Lake County, Utah.

3. During the marriage, Defendant indicated to Plaintiff by his words and actions that he no longer loved Plaintiff and no longer wished to remain married to her.

4. The parties own no real property.

5. During the marriage, a child was born to Plaintiff to-wit: Keith Douglas Sandoval, born July 16, 1978.

6. Plaintiff is a fit and proper person to be awarded the care, custody and control of the minor child born during the parties' marriage, subject to Defendant's reasonable and generous right of visitation.

7. Defendant has failed to provide support and Plaintiff and the said minor child have received public assistance from the Utah State Department of Social Services; pursuant to §78-45-9 and §78-45b-3, Utah Code Annotated, 1953, as amended, the State of Utah has a right to collect child support accrued during the time Plaintiff received public assistance.

8. The parties have separated and divided their personal property, and henceforth each party should own, free of any claim of the other, all items of personal property which are now in his or her possession, custody or control, and each party should be free to dispose of all such items as well as other items of personal property which may hereafter be acquired by him or her as fully and effectively as if he or she were unmarried.

9. The parties have no joint debts or obligations and each party should hold the other harmless from all debts and obligations incurred by such party either before or after the filing of the Complaint herein. Each party should assume and pay their respective sole obligations.

10. Each party should pay his or her own attorney's fees and costs incurred in this action.

Pursuant to the foregoing Findings of Fact, the Court hereby makes the following:

CONCLUSIONS OF LAW

1. Defendant's behavior described in Finding 3 above constituted cruel treatment of Plaintiff, and caused Plaintiff great mental distress.

2. Plaintiff shall be awarded a Decree of Divorce from Defendant, the same to become final ^{UPON} ~~three months after~~ entry.

3. Plaintiff shall be awarded the care, custody and control of the minor child born during the parties' marriage, subject to Defendant's reasonable and generous rights of visitation.

4. Pursuant to §78-45-9 and §78-45b-3, Utah Code Annotated, 1953, as amended, the State of Utah is entitled to collect from Defendant child support accrued during the time Plaintiff received public assistance for or on account of the minor child born to Plaintiff during the parties' marriage.

5. The parties have separated and divided their personal property, and henceforth each party shall own, free of any claim of the other, all items of personal property which are now in his or her possession, custody or control, and each party shall be free to dispose of all such items as well as other items of personal property which may hereafter be acquired by him or her as fully and effectively as if he or she were unmarried.

6. The parties have no joint debts or obligations and each party shall hold the other harmless from all debts and obligations incurred by such party either before or after the filing of the Complaint herein. Each party shall assume and pay

or her as fully and effectively as if he or she were unmarried.

5. The parties have no joint debts or obligations and each party shall hold the other harmless from all debts and obligations incurred by such party either before or after the filing of the Complaint herein. Each party shall assume and pay their respective sole obligations.

6. Each party shall pay his or her own attorney's fees and costs incurred in this action.

DATED this 23rd day of September, 1981.

BY THE COURT:

W. Sterling Evans
DISTRICT JUDGE ATTEST
W. STERLING EVANS
CLERK

CERTIFICATE OF MAILING BY Barbara Fisher
DEPUTY CLERK

I hereby certify that I mailed, U. S. mail, postage prepaid, a true and correct copy of the foregoing Decree of Divorce to Defendant KENNETH JOE SANDOVAL, at U. S. Army, HHC-82nd Enc. Bn. -APD, New York, New York 09139, and to Jeffre H. Thorpe, Deputy County Attorney, at 2250 South Redwood Road, Salt Lake City, Utah 84119, this 24 day of SEPTEMBER 1981.

Mark R. Emmett
MARK R. EMMETT